

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 25159 of 2013

Arising Out of PS.Case No. -134 Year- 2011 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Babloo Paswan S/O Johan Paswan
2. Kundan Kumar S/O Gopal Paswan
3. Kanhaiya Paswan S/O Jahuri Paswan
4. Shanichar Paswan S/O Bishun Dev Paswan
All resident of Harrakh, Kapasiya, Ward No. 13, P.O.- Refinery
Township, P.S.- Nagar, District- Begusarai.

.... Petitioners

Versus

1. The State of Bihar
2. Lalo Paswan, S/o Late Khedo Paswan, residing at Harrakh, Kapasiya,
Ward No. 13, P.O. Refinery Township, P.S. Nagar Thana, Distt.
Begusarai.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal
For the Opposite Party/s : Mr. Ashok Kumar Singh (App)
Mr. S. Ambastha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 22-11-2016 Heard Sri Nikhil Kumar Agrawal, learned counsel for
petitioners, learned Addl. Public Prosecutor as well as learned
counsel, who has appeared on behalf of informant/opposite party
no. 2.

Four petitioners have approached this Court invoking
its inherent jurisdiction under Section 482 of the Code of Criminal
Procedure, 1973, with a prayer to quash an order dated
21-09-2001 passed by learned Chief Judicial Magistrate,
Begusarai (hereinafter referred to as the 'Magistrate') in Begusarai
P.S. Case No. 134 of 2011. By the said order, the learned

Magistrate has taken cognizance of offence under Section 366(A) and 120(B)/34 of the Indian Penal Code.

The order impugned has been assailed on the ground that though five persons, including four petitioners, were named as accused in the F.I.R. i.e. Begusarai P.S. Case No. 134 of 2011, during investigation, accusation against four petitioners were not found true and as such, their names were not included in column no. 11 of the chargesheet and they were virtually exonerated by the investigating officer. The chargesheet was submitted only against one accused person. After the petitioners were exonerated by the investigating officer, the learned Magistrate, without assigning any reason, differing with the police report, has passed order of cognizance against petitioners also.

It has been argued that time without number, it has been held that though the learned Magistrate is competent to take cognizance differing with the police report, the learned Magistrate is required to assign reason succinctly. By way of placing the impugned order, he submits that nothing has been indicated in the impugned order and as such, the order is required to be interfered with.

In this case, supplementary affidavit has also been filed on behalf of petitioners to show that till date, the case is fixed

for supply of police paper only and charge has not been framed.

Learned Addl. Public Prosecutor as well as learned counsel for the informant/opposite party no. 2 have opposed the prayer of petitioners, however; they were not in a position to satisfy the Court as to whether the learned Magistrate, while passing the impugned order, had assigned any reason.

On going through the impugned order, the Court is satisfied that the learned Magistrate has passed the order without assigning any reason while differing with the police report. Once in a police case, after investigation police submits report exonerating the accused persons, the learned Magistrate, though competent to pass order of cognizance differing with the police report, at the same time he/she is required to succinctly indicate the reason for differing with the police report.

In view of the fact that order impugned does not indicate any reason, the same is liable to be set aside. Ofcourse, the impugned order was passed long back in the year 2011, on perusal of the ordersheet, which has been brought on record by filing supplementary affidavit, it is evident that till the date of passing of the interim order of stay by this Court i.e. order dated 07-08-2013, charges were not framed.

Accordingly, the order impugned is hereby set aside

and matter is remitted back to the learned Magistrate to examine the record and pass order in accordance with law. If the learned Magistrate intends to proceed against the petitioners, he is required to succinctly indicate reason for differing with the police report.

With above observation and direction, the petition stands allowed.

(Rakesh Kumar, J.)

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